

<p>SUPREME COURT, STATE OF COLORADO</p> <p>2 East 14th Avenue, 4th Floor</p> <p>Denver, Colorado 80203</p>	<p>DATE FILED: October 8, 2021 11:25 AM</p>
<p>Original Proceeding Pursuant to Colorado Constitution, Art. V, §44.5</p>	
<p>In re Colorado Independent Congressional Redistricting Commission</p>	<p>▲ COURT USE ONLY ▲</p>
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<p>COLORADO COMMON CAUSE’S CONGRESSIONAL REDISTRICTING PLAN BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that the brief complies with C.A.R. 28(g) and with this Court's Order of July 26, 2021. It contains 8550 words. Colorado Common Cause does not seek oral argument at the October 12, 2021 hearing.

s/Amanda M. Gonzalez

Amanda M. Gonzalez

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**STATEMENT OF THE IDENTITY OF THE AMICUS CURIAE AND ITS
INTEREST IN THE CASE**

Colorado Common Cause is the local chapter of Common Cause, a national non-partisan, non-profit citizen advocacy organization, that for fifty years has fought to ensure open, honest, and accountable government at the local, state and federal level. It has more than 24,000 members who reside in every Congressional District throughout the state. Redistricting and the establishment of independent redistricting commissions is a policy area focus for Common Cause and it has worked across the country to further this work. Having been closely involved in the drafting of Amendment Y to ensure the drawing of independent congressional districts based on clear, ordered criteria, Colorado Common Cause and its members and supporters have a specialized interest in the outcome of this case, and to ensure that the congressional map approved by this Court complies with the criteria enshrined in the Colorado Constitution.

ISSUE PRESENTED

Whether the Congressional Redistricting Commission's Final Congressional Redistricting Plan complies with article V, §44.3 of the Colorado Constitution.

STATEMENT OF THE CASE

In 2018, Colorado amended its constitution to create an independent Congressional Redistricting Commission (“Commission”), tasked with dividing the state into as many congressional districts as there are representatives in Congress apportioned to this state. Due to population growth documented by the 2020 census data, Colorado gained an additional congressional district, requiring the Commission to divide the state into eight congressional districts. Pursuant to the clear criteria set forth in Section 44.3 of article V of the Colorado Constitution, the Commission was required to ensure that its districting plan made a good-faith effort to achieve precise mathematical population equality between districts, complied with the Voting Rights Act, and that it, as much as reasonably possible, preserved whole communities of interest and whole political subdivisions, and drew compact districts. Only after these criteria were met could the Commission consider the maximizing the number of competitive districts. Additionally, the Colorado Constitution clearly directs the Commission not to approve a map that results in the denial or abridgement of the right of any citizen to vote on account of that person’s race or membership in a language minority group, including diluting the impact of that racial or language group’s electoral influence. In its effort to draw congressional districts that comply with these specific criteria, the Commission failed.

SUMMARY OF THE ARGUMENT

The Commission’s Final Congressional Redistricting Plan (“Plan”) submitted to this Court for approval does not comply with the criteria mandated in the Colorado Constitution for drawing congressional districts. In short, the Plan does not comply with the Voting Rights Act of 1965, 52 U.S.C. §10301 *et seq.*, as amended (“VRA”); it does not comply with the Colorado Constitution’s clear directive to avoid a plan that results in diluting the impact of a racial or language minority group’s electoral influence; and it does not preserve communities of interest. The Plan should be rejected and returned to the Commission for a complete analysis of racially polarized voting and a determination that districts must be drawn to preserve whole communities of interest that exhibit shared substantial interests, even where they do not constitute a majority of a district.

LEGAL ARGUMENT

I. STANDARD OF REVIEW

Section 44.3 of article V of the Colorado Constitution sets forth the criteria that the Commission is to follow when adopting a congressional redistricting plan.

Section 44.3 contains both mandatory criteria that the Commission *must apply* as required by the United States Constitution and the federal Voting Rights Act, and discretionary criteria that the Commission should apply “*as much as is reasonably*

possible,” including preserving whole communities of interest and whole political subdivisions, and creating compact districts. Colo. Const., art. V, §44.3(2). When reviewing the Plan for compliance with these factors, the Court “shall approve the plan submitted unless it finds that the commission [] abused its discretion in applying or failing to apply the criteria listed in section 44.3.” Colo. Const, art. V, §44.5(2).

II. LAW GOVERNING REDISTRICTING

A. Colorado’s Constitutional Congressional Redistricting Criteria

When the Commission creates congressional districts, it is guided by Article V, Section 44.3 of the Colorado Constitution:

(1) In adopting a congressional redistricting plan, the commission shall:

(a) Make a good-faith effort to achieve precise mathematical population equality between districts, justifying each variance, no matter how small, as required by the constitution of the United States. Districts must be composed of contiguous geographic areas;

(b) Comply with the federal "Voting Rights Act of 1965", 52 U.S.C. sec. 10301, as amended.

(2)(a) As much as is reasonably possible, the commission's plan must preserve whole communities of interest and whole political subdivisions, such as counties, cities, and towns.

(b) Districts must be as compact as is reasonably possible.

(3)(a) Thereafter, the commission shall, to the extent possible, maximize the number of politically competitive districts.

(b) In its hearings in various locations in the state, the commission shall solicit evidence relevant to competitiveness of elections in Colorado and shall assess such evidence in evaluating proposed maps.

(c) When the commission approves a plan, or when nonpartisan staff submits a plan in the absence of the commission's approval of a plan as provided in section 44.4 of this article V, the nonpartisan staff shall, within seventy-two hours of such action, make publicly available, and include in the commission's record, a report to demonstrate how the plan reflects the evidence presented to, and the findings concerning, the extent to which competitiveness in district elections is fostered consistent with the other criteria set forth in this section.

(d) For purposes of this subsection (3), "competitive" means having a reasonable potential for the party affiliation of the district's representative to change at least once between federal decennial censuses. Competitiveness may be measured by factors such as a proposed district's past election results, a proposed district's political party registration data, and evidence-based analyses of proposed districts.

(4) No map may be approved by the commission or given effect by the supreme court if:

(a) It has been drawn for the purpose of protecting one or more incumbent members, or one or more declared candidates, of the United States house of representatives or any political party; or

(b) It has been drawn for the purpose of or results in the denial or abridgement of the right of any citizen to vote on account of that person's race or membership in a language minority group, including diluting the impact of that racial or language minority group's electoral influence.

B. Mandatory Criteria in Colorado Constitution

The first two criteria in Section 44.3 are population equality among the state's congressional districts (*i.e.*, adherence to the one person/one vote

requirement) and compliance with the VRA to ensure non-dilution of minority voting strength. Colo. Const., art. V, §44.3(4)(b).

These are absolute requirements because they are grounded in the United States Constitution and the federal Voting Rights Act, and as such, the Colorado Constitution enshrines these protections with the word “shall.” The plain meaning and typical construction of “shall” is to make a statutory provision mandatory. *People v. District Court, Second Judicial Dist.*, 713 P.2d 918, 921 n.6 (Colo. 1986), citing *Black's Law Dictionary* 1233 (5th ed. 1979) (generally, “the term 'shall' is a word of command, and one which has always or which must be given a compulsory meaning. . . . It has the invariable significance of excluding the idea of discretion”).

The Colorado Constitution extends the protections for communities of color under the federal Voting Rights Act by requiring the creation of influence districts. Colo. Constitution, article V, Section 44.3(4)(b) sets out the standard for how to measure compliance, allowing the court to reject a map if “[i]t has been drawn for the purpose of or results in the denial or abridgement of the right of any citizen to vote on account of that person's race or membership in a language minority group, including diluting the impact of that *racial or language minority group's electoral influence*” (emphasis added).

1. The Requirement to Keep Communities of Interest and Political Subdivisions Whole and Keep Districts Compact.

After equal population and compliance with the Voting Rights Act, the Colorado Constitution requires that “as much as is reasonably possible,” the commission's plan must preserve whole communities of interest, preserve whole political subdivisions, and keep districts compact. Colo. Const., art. V, §44.3(2). By placing these three criteria on the same level and subject to the same qualifier, the voters of Colorado granted the Commission a greater level of discretion than exists with the first two mandatory criteria. Indeed, the natural growth of communities often crosses city or county lines, thereby requiring a more nuanced deliberation about whether to draw lines that might require splitting cities or counties to respect communities of interest or vice versa. Following city lines can result in extremely non-compact, and even non-contiguous districts as evidenced by cities like Aurora that have two or even three non-connected areas. Thus, the qualifier, “as much as is reasonably possible” grants the commission and by extension this Court, the authority to give these three factors significant weight in applying them but also the reasonable discretion to balance the consideration of each relative to the other.

The preservation of communities of interest “stems directly from the underlying purpose of maximizing fair and effective representation.” *Hall v.*

Moreno, 270 P.3d 961, 971 (Colo. 2012). The people of Colorado took pains to define communities of interest in great detail. Colo. Const., art. V, §44.3(3), subsection (b) states:

(I) “Community of interest” means any group in Colorado that shares one or more substantial interests that may be the subject of federal legislative action, is composed of a reasonably proximate population, and thus should be considered for inclusion within a single district for purposes of ensuring its fair and effective representation.

(II) Such interests include but are not limited to matters reflecting: (A) Shared public policy concerns of urban, rural, agricultural, industrial, or trade areas; and (B) Shared public policy concerns such as education, employment, environment, public health, transportation, water needs and supplies, and issues of demonstrable regional significance.

(III) Groups that may comprise a community of interest include racial, ethnic, and language minority groups, subject to compliance with subsections (1)(b) and (4)(b) of section 44.3 of this article V, which subsections protect against the denial or abridgement of the right to vote due to a person's race or language minority group.

(IV) "Community of interest" does not include relationships with political parties, incumbents, or political candidates.

Significantly, the Constitution recognizes that communities of interest may include racial, ethnic, and language minority groups. It extends the protections of the Voting Rights Act to such groups through reference to subsections (1)(b) and (4)(b) of section 44.3 of article V.

Taken together with the Constitutional language defining the Voting Rights Act protections to guard against the dilution of racial or ethnic or language minority groups electoral influence, districts must be drawn to preserve whole communities of interest that exhibit shared substantial interests, even where they do not constitute a majority of a district.

2. Competitiveness Criteria

The Colorado Constitution requires the Commission to prioritize all other criteria for drawing districts before addressing competitiveness. The last listed criterion for drawing U.S. House districts in the Colorado Constitution states that “thereafter, the commission shall, to the extent possible, maximize the number of politically competitive districts.” Colo. Const. art. V, §44.3(3). The Commission must solicit and assess “evidence relevant to competitiveness of elections in Colorado” at its public hearings. *Id.* at §44.3(3)(b). In determining the scope of a law, a court should “look first to its language, giving the words used their ordinary meaning.” *Moskal v. United States*, 498 U.S. 103, 108 (1990). Assigning to “thereafter” its ordinary meaning, the Commission must first draw districts that meet federal law requirements of equal population and section 2 of the Voting Rights Act, preserve whole communities of interest and whole political subdivisions – such as counties, cities, and towns – as much as is reasonably possible, and make districts as compact as is reasonably possible. Colo. Const. art.

V, §44.3(1)-(2). The Commission may only move to making districts competitive after those tasks have been completed. Colo. Const. art. V, §44.3(3).

III. THE COMMISSION DID NOT COMPLY WITH THE VOTING RIGHTS ACT.

A. Colorado Compliance with the VRA Requires Protection of Sufficiently Large, Politically Cohesive Minority Communities.

Passage of the Voting Rights Act “was an important step in the struggle to end discriminatory treatment of minorities who seek to exercise one of the most fundamental rights of our citizens: the right to vote.” *Bartlett v. Strickland*, 556 U.S. 1, 10 (2009). Due to its central role in protecting the voting rights of people of color, the Colorado Constitution reiterates the Colorado Commission’s federal law obligation to adhere to Section 2 of the Voting Rights Act. The framers of the amendment placed compliance with the VRA on equal footing with equal population in the list of requirements that the Commission *must* follow when drawing districts. Colo. Constitution, art. V, §44.3(1). Section 2 states that “[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 42 U.S.C. § 10301(a).

The U.S. Supreme Court has provided specific guidance to redistricting bodies such as the Commission by describing the three-prong test a court must

apply to a Section 2 vote dilution challenge to redistricting maps. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). A violation occurs when plaintiffs challenging a map demonstrate that a redistricting body fails to draw a district in which a community of color can elect the candidate of its choice under the following circumstances. The plaintiff must first demonstrate that a minority community: (1) “is sufficiently large and geographically compact to constitute a majority in a single-member district;” (2) “is politically cohesive;” and (3) “that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances . . . —usually to defeat the minority’s preferred candidate.” *Id.* The court’s task is then to consider the “totality of the circumstances and to determine, based upon a searching practical evaluation of the past and present reality whether the political process is equally open to minority voters.” *Id.* at 79 (citations and internal quotation marks omitted). Identifying a Section 2 violation requires a “comprehensive, not limited canvassing of relevant facts.” *Sanchez v. State of Colo.*, 97 F.3d 1303, 1322 (10th Cir. 1996), quoting *Johnson v. De Grandy*, 512 U.S. 997, 1011 (1994).

In fact, the Colorado Constitution extends the protections for communities of color in redistricting even further than the protections of the federal Voting Rights Act by requiring the creation of influence districts. Article V, Section 44.3 of the

Colorado Constitution, section 4(b) empowers the court to review the Commission's maps to ensure that maps are not given effect if:

It has been drawn for the purpose of or results in the denial or abridgement of the right of any citizen to vote on account of that person's race or membership in a language minority group, including diluting the impact of that ***racial or language minority group's electoral influence***.¹

In *Bartlett v. Strickland*, the U.S. Supreme Court acknowledged that while its strict reading of Section 2 did not require the creation of crossover or coalition districts, a state could adopt such a standard. (“Section 2 allows States to choose their own method of complying with the Voting Rights Act, which may include drawing crossover districts”, citing *Georgia v. Ashcroft*, 539 U.S. 461, 480-82 (2003). The Supreme Court continued: “Moreover, the holding should not be interpreted to entrench majority-minority districts by statutory command, for that, too, could pose constitutional concerns. See, e.g., *Miller v. Johnson*, 515 U.S. 900 (1995)). *Bartlett*, 556 U.S. at 11.

In overwhelmingly passing Amendments Y and Z, which included Constitutional language protecting the electoral influence of VRA-covered voters, the voters of Colorado chose a method of complying with Section 2 of the Voting Rights Act that does not require the showing that a reasonably compact district can be drawn where voting-aged Latinos constitute a majority (over 50%) of the voting

¹ Colo. Const. art. V, § 44.3(4)(b) (emphasis added).

age population. Instead, where Latinos, or other communities of color are shown to vote cohesively and can be drawn into a district where they make up a significant portion of a district's voters to exert effective electoral influence, even if the population is not a majority of the district's voters, they must be drawn into a district. Failure to do so constitutes a violation of Colorado's Constitution.

Further, to satisfy the second and third prongs of *Gingles*, states need to examine primary election data to determine whether racially polarized voting exists. In *Sanchez v. Colorado*, evidence of racially polarized voting in primaries was critical to Hispanic plaintiffs' challenge of Colorado House District 60, which the Colorado Reapportionment Commission drew following the 1990 census. Plaintiffs argued that the commission violated section 2 by failing to draw a majority-Hispanic district in the San Luis Valley. *Sanchez*, 97 F.3d at 1308. In its defense of the challenged map, Colorado criticized the plaintiffs' expert witness, arguing that "low voter turnout undercut any exemplary meaning." *Sanchez*, 97 F.3d at 1307 n. 25. The U.S. Court of Appeals for the 10th Circuit rejected this argument, stating that "[I]f 'Democrats' are pitted against 'Democrats' in a primary contest, removing the partisanship factor, one remaining variable in an ecological regression analysis would be ethnicity." *Id.* The court added that in "heavily Anglo precincts, Anglo candidates received the Democrat vote over the

Hispanic primary candidate” and that, as result, “these elections would seem facially probative of racial bloc voting.” *Id.*

B. The Commission Did Not Conduct a VRA Analysis, Nor Did It Explain How Its Plan Complies with the Colorado Constitution’s Anti-Dilution of Electoral Influence Requirement.

To satisfy the Voting Right Act requirements, the congressional commission should have identified significant populations of racial or language minority groups and conducted racial polarization analysis. It did neither. Unlike the Independent Legislative Redistricting Commission which hired an outside expert to conduct analyses of areas where there might be racially polarized voting — that is, where minority groups vote cohesively and white voters vote as a bloc to defeat minority-preferred candidates, “the congressional commission did not conduct such a study, according to nonpartisan staff.” *See* Vo, T. and Fish, S. (October 1, 2021). A New Colorado congressional map is before the Supreme Court. Now the legal battles begin. The Colorado Sun.

[https://coloradosun.com/2021/10/01/colorado-redistricting-maps-supreme-court-](https://coloradosun.com/2021/10/01/colorado-redistricting-maps-supreme-court-review/)

[review/](https://coloradosun.com/2021/10/01/colorado-redistricting-maps-supreme-court-review/) , *see also* Bunch, J. (October 1, 2021) Bring back smoky rooms, if redistricting the alternative. Colorado Politics.

[https://www.coloradopolitics.com/denver/insights-bring-back-the-smoky-rooms-if-redistricting-is-the-alternative/article_073d388e-223a-11ec-91fb-](https://www.coloradopolitics.com/denver/insights-bring-back-the-smoky-rooms-if-redistricting-is-the-alternative/article_073d388e-223a-11ec-91fb-d73da93c4a62.html)

[d73da93c4a62.html](https://www.coloradopolitics.com/denver/insights-bring-back-the-smoky-rooms-if-redistricting-is-the-alternative/article_073d388e-223a-11ec-91fb-d73da93c4a62.html); *see also* Wyloge, J. (October 3, 2021) Struggle over

congressional redistricting plan’s Hispanic voter protections heads to Supreme Court. Colorado Springs Gazette. https://gazette.com/colorado_politics/colorado-congressional-redistricting-,map-plan-hispanic-latino-voter-dilution-heads-to-supreme-court/article_12885232-2497-11ec-9fb8-b743cd963741.html ; Bishop Jerry Demmer, written comments, October 5, 2021, [Colorado Independent Redistricting Commissions](#).

Contrary to the clear Constitutional requirement of Article V, §44(1)(f) that “Citizens want and deserve an inclusive and meaningful [] process” that enables them to watch the “redistricting commission’s deliberations,” the Commission declined to discuss how the maps could comply with the VRA or the Colorado Constitution’s vote dilution language in public meetings.

Instead, in the Preliminary Congressional Plan Memorandum, submitted on June 23, 2021, the Redistricting Commission Staff summarily walked through the three *Gingles* factors without any analysis. Tr., Mtg Mats., June 23, 2021, Preliminary Congressional Plan Memorandum, pp 3-4. On the first *Gingles* factor, whether a minority community is sufficiently large and geographically compact to constitute a majority in a single-member district, the Staff states that it “is not certain that it is possible to draw a district where a minority group is sufficiently large and geographically compact enough to constitute a majority.” *Id.* Although declining to the conduct any analysis, the Staff asserts that it will “assume the first

precondition is satisfied.” *Id.* On the second *Gingles* factor - whether the district is politically cohesive - the Staff states that making such a showing would “require that a VRA expert examine the voting patterns of the minority group,” and that “even without this expert examination, staff assumes that the second precondition is met.” *Id.* And on the third *Gingles* factor, “that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances . . . — usually to defeat the minority’s preferred candidate,” the Staff states that “[s]uch a showing would require that a VRA expert analyze whether the majority voted as a bloc enabling it to defeat preferred minority candidates.”

Instead of engaging such an expert or conducting its own racially polarized voting analysis, the Staff concluded that because the heavily minority populated areas in parts of Denver, Jefferson, Adams and Arapahoe Counties have “elected Democratic congressional representatives...staff does not believe that a majority is defeating the minorities’ candidates of choice.” *Id.* Staff erroneously concluded that general election results were the only measure of minority candidate choice. There is no mention anywhere in the Staff Memorandum of the requirement in Section 44.3(4)(b) about whether the Preliminary Plan complies with the Colorado Constitution’s anti-dilution of electoral influence requirement. Indeed, in its presentation of the Preliminary Plan, the Staff appears to reject the Colorado Constitution’s article V, section 44.3(4)(b) anti-dilution requirement of electoral

influence mandate, suggesting erroneously that the Supreme Court’s decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), which predates the adoption of Amendment Y by five years, somehow renders it unenforceable. Tr. Audio, Congressional Redistricting Commission Meeting, 6/23/21, 2:32:35 – 2:35:01.

Subsequently, the First, Second, and Third Congressional Plan Memoranda submitted by the staff contained the following identical statement:

Nonpartisan staff does not believe that there is sufficient voting age population to create a majority-minority congressional district within Colorado that complies with the requirements of the Colorado Constitution. The Congressional Commission has not received any comments suggesting that a majority-minority district must be created.

Tr., Mtg Mats., September 3, 2021, First Congressional Staff Plan Memorandum, p 3; Mtg Mats., September 15, 2021, Second Congressional Staff Plan Memorandum, p 3; Mtg Mats., September 23, 2021, First Congressional Staff Plan Memorandum, p 3. These statements misconstrue the Commission’s obligation to comply with the VRA. It is not the responsibility of the testifying public to bring a VRA analysis showing racially polarized voting to the Commission. Rather, the Commission had an affirmative duty to ensure that its Plan complies with VRA. Colo. Const., art. V, §44.3(1)(b). It failed.

Similarly, the First, Second, and Third Congressional Plan Memoranda contain the following identical statement:

Diluting a racial or language minority group's electoral influence. To the extent that section 44.3(4)(b) is a restatement of the federal Voting Rights Act, nonpartisan staff does not believe that there is an area in Colorado with sufficient citizen voting age minority population to form a majority-minority congressional district. Nonpartisan staff considered communities of interest in creating this plan and does not believe that the electoral influence of any such community was diluted in this plan.

Id. These statements erroneously construe the Colorado Constitution anti-dilution requirements simply to mirror the requirements of the VRA, and additionally misconstrue the Commission's affirmative obligations to comply with the Colorado Constitution's anti-dilution of electoral influence requirement. The Commission's own plan memos, devoid of any analysis, make clear that the Commission made no attempt to comply with these obligations.

Consistently, the submitted Plan's blanket statement that it complies with the VRA provides no analysis or data to support its conclusion, and no opportunity for interested parties to challenge that conclusion. *Plan*, pp. 10-12. The Commission's Plan additionally contains no explanation of how it complies with the Colorado Constitution's requirement that its map must not dilute the impact of a racial or language minority group's influence. Colo. Const., art. V, §44.3(4)(b). Indeed, the Commission's Plan addresses the voter dilution prohibition with a single sentence containing nothing but a denial of the fact:

The Final Plan was not drawn for the purpose of, and does not result in, the denial or abridgment of the right of any citizen to vote on account of that person's race or membership in a language minority group, including

diluting the impact of that racial or language minority group’s electoral influence.

Plan, pp. 10-11. This statement ignores the Commission’s constitutional obligation to draw a district, where Latinos, or other communities of color, if they are shown to vote cohesively, and they make up a significant portion of a district’s voters, can exert effective electoral influence, even if the population is not a majority of the district’s voters. In that scenario, they must be drawn into a district.

The failure of the Commission to conduct a VRA analysis or explain how its Plan does not dilute the impact of a racial or language minority group’s electoral influence should be, on its face, enough for this Court to send the Plan back to the Commission with instructions to try again. The Commission should start with conducting a racially polarized voting analysis, exploring how it could create districts that do not dilute the impact of a racial or language minority group’s electoral influence, and deliberating in public how that analysis should inform the drawing of a map.

IV. A CONGRESSIONAL DISTRICTING MAP THAT COMPLIES WITH THE VRA AND THE COLORADO CONSTITUTION IS REQUIRED.

A. Colorado Common Cause’s Proposed Map Complies with the VRA and the Colorado Constitution’s Anti-Dilution of Electoral Influence Requirement.

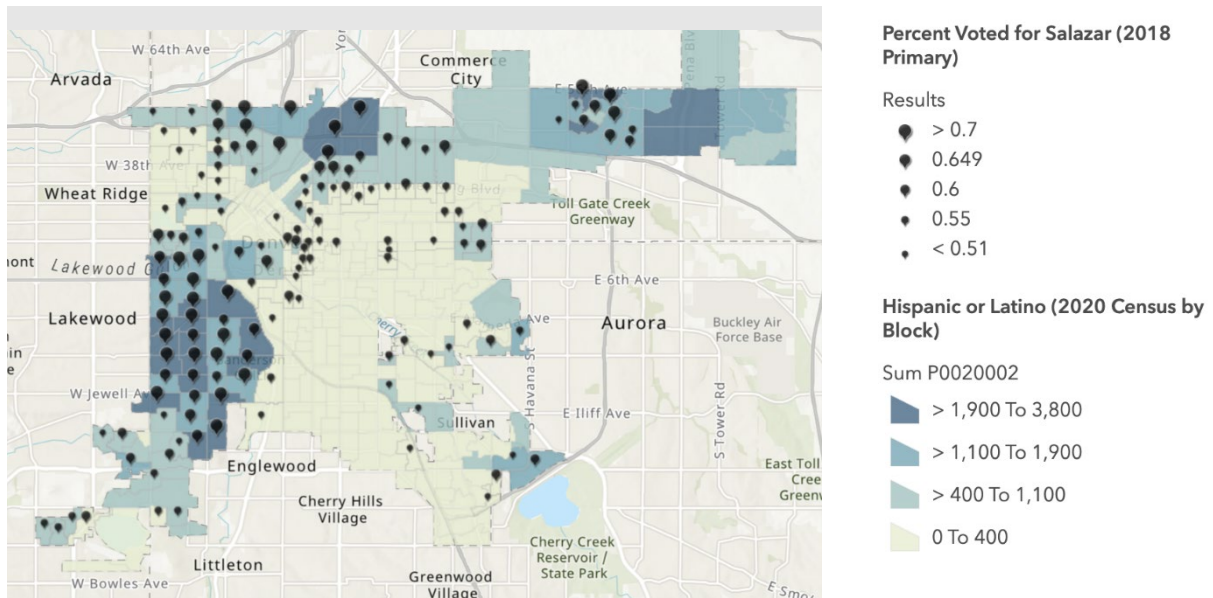
Colorado Common Cause starts its Voting Rights Act analysis with Congressional District 1. “[T]he lack of success of Hispanic candidates is a strong

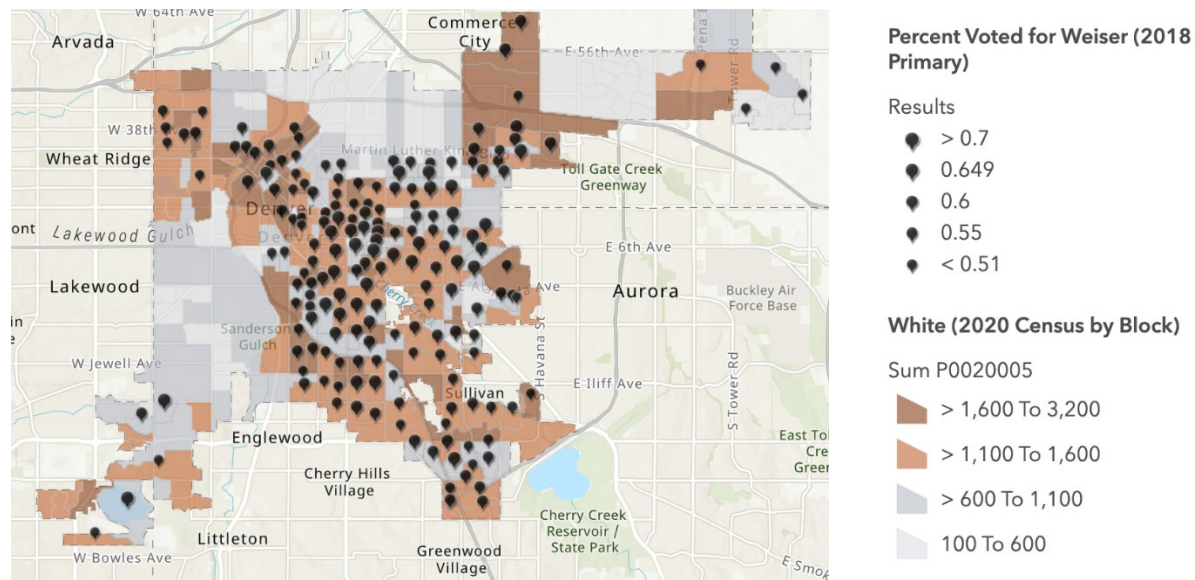
factor tending to show vote dilution." *Sanchez v. Bond*, 875 F.2d 1488, 1496 (10th Cir. 1989). In the history of Colorado's Congressional District 1, dating back to its creation in 1893, the district has never been represented by a person of Hispanic descent. U.S. House of Representatives: History, Art & Archives, Hispanic-American Representatives, Senators, Delegates, and Resident Commissioners by Congress, 1822–Present, available at <https://history.house.gov/Exhibitions-and-Publications/HAIC/Historical-Data/Hispanic-American-Representatives,-Senators,-Delegates,-and-Resident-Commissioners-by-Congress/>.

District 1, as currently configured and as proposed in the Commission's maps largely follows the contours of Denver, unconstitutionally dilutes the Hispanic population. Denver's Hispanic population constitutes 34% of the city's residents. When combined with several Denver suburbs with significant populations of Hispanic residents, the population reaches over 50%.

In the recent two decades, no Hispanic candidate has run in the currently configured CD 1. In order to observe elections where the Hispanic population's choice of candidates diverged from the white populations, Colorado Common Cause examined the 2018 primary elections for Attorney General. While many counties do not report data on primary results by precinct, Denver Elections Commission does. In examining the primary results, we find that Denver's predominantly Democratic voters split their support for candidates Phil Weiser and

Joe Salazar. The precincts with concentrated Hispanic populations voted cohesively for candidate Salazar, who is of Hispanic and Apache descent. Predominantly non-Hispanic white precincts voted for candidate Phil Weiser. The 2018 primaries are a clear demonstration of polarization of votes along racial lines, where the Hispanic communities in Denver cannot elect a candidate of their choice in a district bound by municipal borders. The Commission erred in failing to examine this data.

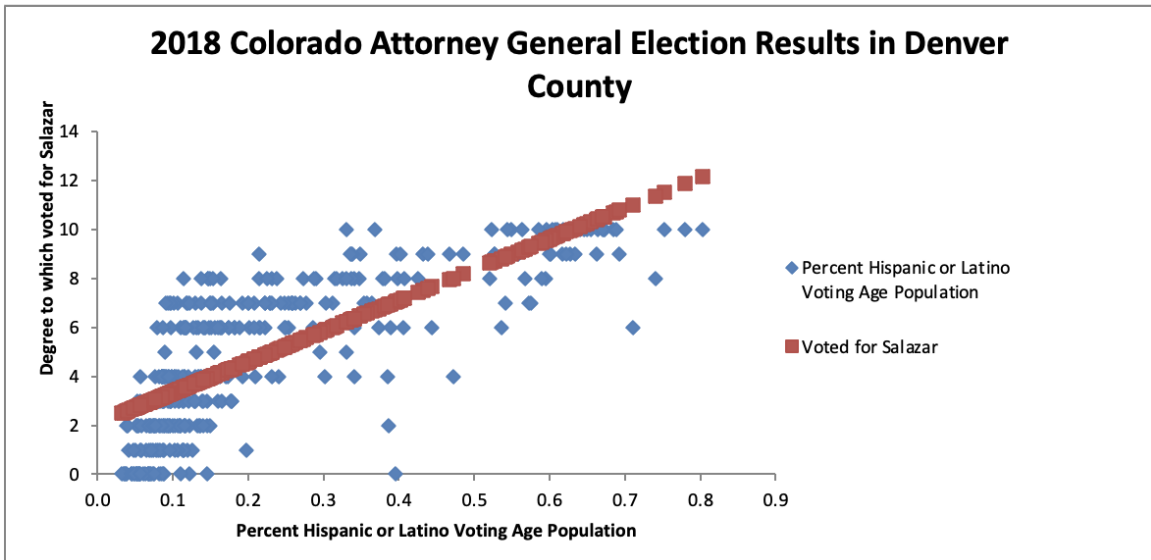


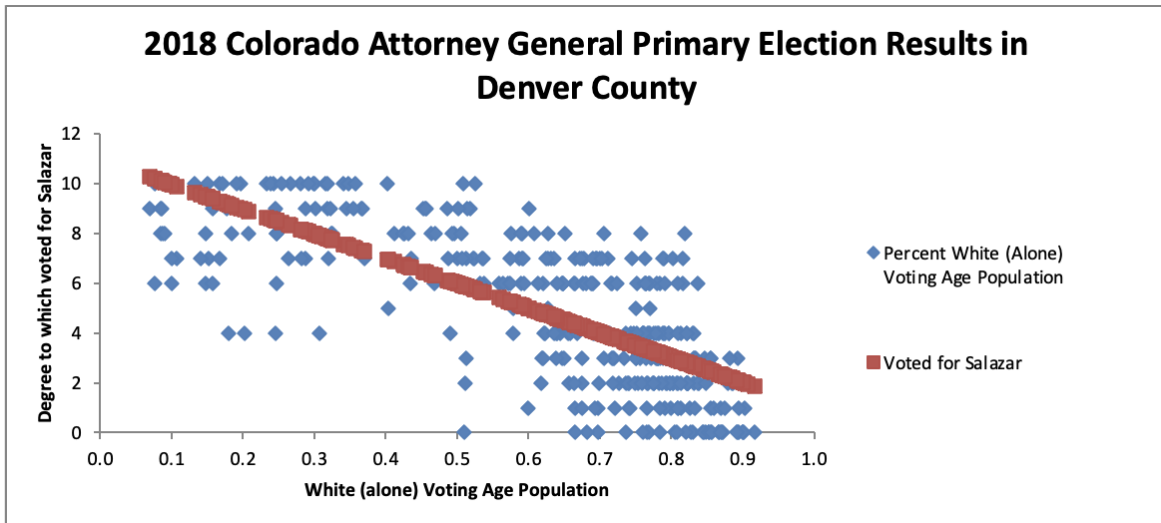


Sources: Decennial Census P.L. 94-171; Denver Elections Commission - “2018 Primary Election City and County of Denver, June 26, 2018.” Retrieved from [https://www.denvergov.org/media/denverapps/electionresults/maps/20180626/A--6-26-2018-7 PM Results/7PM Results Dem Attorney General.pdf](https://www.denvergov.org/media/denverapps/electionresults/maps/20180626/A--6-26-2018-7%20PM%20Results/7PM%20Results%20Dem%20Attorney%20General.pdf)

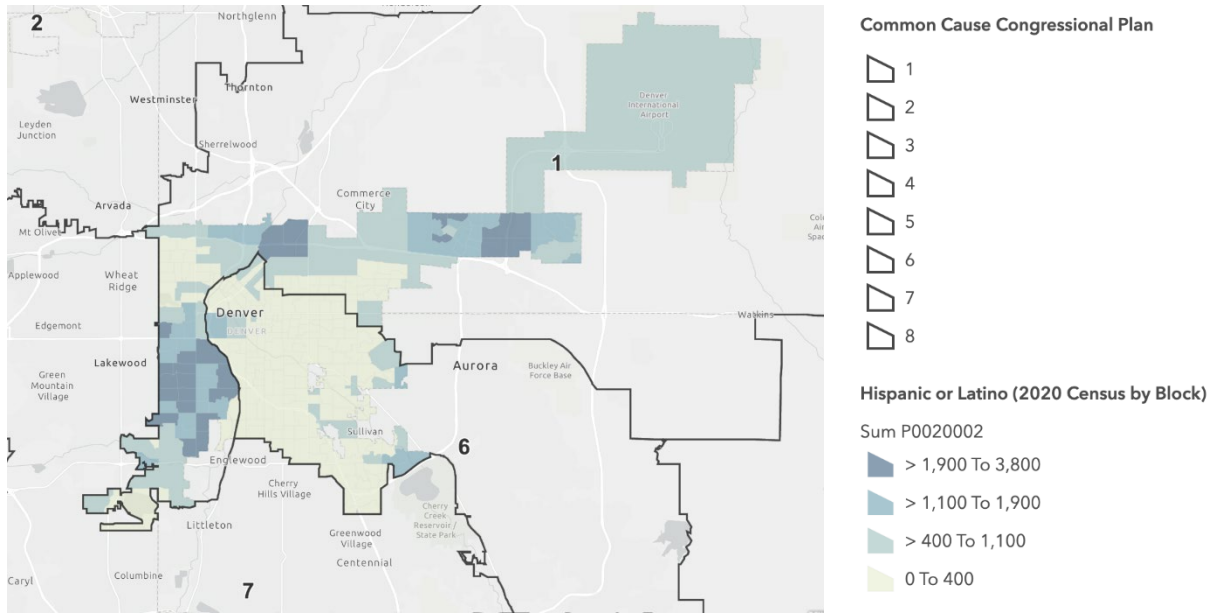
To further demonstrate polarization of voting patterns along racial lines, Colorado Common Cause conducted a correlation and bivariate ecological regression analysis. Colorado Common Cause found that there was a strong positive correlation (+76.2%) between the Hispanic or Latino voting age population and votes for Salazar in the 2018 Attorney General primary election in Denver County. Conversely, there is a strong negative correlation (-74.2%) between the white voting age population and votes for Salazar in the 2018 Attorney General primary election in Denver County.

A regression analysis indicated that about 57.7% of the variance in the primary election result and Hispanic or Latino voting age population data can be explained by ethnicity. In other words, more than half of the variance can be explained by ethnicity. A regression analysis indicated that about 54.7% of the variance in the primary election result and white voting age population data can be explained by race. In other words, more than half of the variance can be explained by race.





The Common Cause Colorado congressional plan would remedy this vote dilution by configuring District One to unite the Hispanic populations of Denver’s west side, west of the I 25 (including the neighborhoods of Athmar Park, Barnum, College View/South Platte, Harvey Park, Mar Lee, Ruby Hill, Valverde, Villa Park, West Colfax, Westwood) with northeast portions of Denver (including Chafee Park, Elyria/Swansea, Gateway Valley Ranch, Globeville, Montebello, Northeast Park Hill, and Sunnyside).



These neighborhoods voted cohesively in 2018 and form a district that has a population with 46.5% Hispanic, 36.9%, non-Hispanic white, 10% Black/African American, 5.4% Asian American, and 4.5% Native American/American Indian. Of the voting age population, 58.81% are persons of color, specifically 41.2% are Hispanic.

B. Colorado Common Cause’s Proposed Map Preserves Communities of Interest and Whole Political Subdivisions as Much as Is Reasonably Possible

1. Definition of Communities of Interest

After ensuring that a map meets the one person/one vote requirement and complies with the VRA, the Commission must next, “as much as reasonably possible,” preserve whole communities of interests and whole political

subdivisions. Colo. Const., art. V, §44.3(2)(a). The Commission defines communities of interest as follows:

I) "Community of interest" means any group in Colorado that shares one or more substantial interests that may be the subject of federal [state] legislative action, is composed of a reasonably proximate population, and thus should be considered for inclusion within a single district for purposes of ensuring its fair and effective representation.

(II) Such interests include but are not limited to matters reflecting:

(A) Shared public policy concerns of urban, rural, agricultural, industrial, or trade areas; and

(B) Shared public policy concerns such as education, employment, environment, public health, transportation, water needs and supplies, and issues of demonstrable regional significance.

(III) Groups that may comprise a community of interest include racial, ethnic, and language minority groups, subject to compliance with subsections (1)(b) and (4)(b) of section 44.3 [48.1] of this article V, which subsections protect against the denial or abridgement of the right to vote due to a person's race or language minority group.

(IV) "Community of interest" does not include relationships with political parties, incumbents, or political candidates.

Colorado Independent Redistricting Commission Website,

https://redistricting.colorado.gov/public_comments/new. Colorado Common

Cause's proposed map preserves whole communities of interest throughout the state.

2. Communities of Interest in Colorado Common Cause Proposed Map²

a) Communities of Interest in Proposed Congressional District One

As discussed above, Colorado Common Cause congressional plan configures District 1 to unite the Hispanic populations of the west side of Denver, west of the I-25 (including the neighborhoods of Athmar Park, Barnum, College View/South Platte, Harvey Park, Mar Lee, Ruby Hill, Valverde, Villa Park, West Colfax, Westwood) as well as northeast portions of Denver (including Chafee Park, Elyria/Swansea, Gateway/Green Valley Ranch, Globeville, Montbello, Northeast Park Hill, and Sunnyside). These Hispanic neighborhoods voted cohesively in 2018 and form a district that has a total population of 45.6% Hispanic, and a voting age population that is 42.2% Hispanic.

² Herein, all references, unless otherwise noted, to the record before the Commission will be to documents, written comments, or audio recordings collected on the Colorado Independent Redistricting Commission's website: [Colorado Independent Redistricting Commissions](#). Colorado Common Cause will use the following scheme to note different record sources:

- (1) for citations to documents in the Meeting Materials - Congressional tab: Tr, Mtg Mats., [date of meeting], [name of document], [relevant page of document];
- (2) for citations to Written Public Comments collected under the Public Engagement tab: Tr, Pub. Cmt., [name], [date];
- (3) for citations to Emails collected at [Public Comment | Powered by Box](#) : Tr, Email, [name], [date];
- (4) for Audio Testimony at Commission hearings collected under the Meetings Archive tab: Tr, audio [location of hearing or meeting], [date of hearing or meeting], [time stamp of testimony cited].

Additionally, Common Cause's Congressional District 1 includes the Hmong community in Westminster, the Native American population in the northern suburbs of Denver and historically African American neighborhoods of Montbello and Gateway/Green Valley Ranch. Many of the residents of Denver's north and northeastern neighborhoods and surrounding suburban cities work at, fly out of, and are impacted by the Denver International Airport (DEN), which is also in CD1. The racial makeup of the proposed Congressional District 1 would be 10% Black/African American, 5.4% Asian American, and 4.5% Native American.

As Denver's population has grown, property prices have increased, and the Hispanic population has moved out to northern suburbs.³ Tr. Pub. Cmt., T. Trombley, 9/27/21 (referencing 5/2/21 Denver Post article). This district's proposed connection of north Denver with its northeastern suburbs recognizes that community of interest. Congressional District One includes the Denver suburban cities and places of northeastern Aurora, Commerce City, Sheridan, Thornton, and Denver International Airport. Tr. Pub. Cmt., E. Garcia, 9/23/21.

There are several other communities of interest within the proposed First Congressional District that share concerns and underly the proposed First

³ John Aguilar, Denver's Changing Suburbs: The Future is Older and More Racially and Ethnically Diverse. Denver Post, May 2, 2021. [Denver's changing suburbs: The future is older and more racially and ethnically diverse \(denverpost.com\)](https://www.denverpost.com/2021/05/02/denver-changing-suburbs-the-future-is-older-and-more-racially-and-ethnically-diverse/)

Congressional District. These shared interests include keeping the communities of Commerce City and Adams County together to support common interest in traffic, affordable housing, environmental issues connected to the oil refinery, and access to health care. Tr, audio, Commerce City, 8/24/21, 7:29:23; 7:34:25; 8:04:11; the collective environmental and recreational interests of Green Valley Ranch, the Highline Canal trail and Rocky Mountain Arsenal, Tr. Pub. Cmt., C. Maj, 6/10/21; and connecting the Denver International Airport and the Colorado Air and Space Port to create jobs and economic opportunities to the community adjacent to the E470 corridor. Tr. Pub. Cmt., C. Maj, 6/10/21. Sheridan is also included in the proposed First Congressional District, a move urged by Xochiti Gaytan, co-chair of the Colorado Latino Forum, and State Representative Susan Lontine, who each maintain that Sheridan should be kept together with southwest Denver because of the shared interest in Latino culture and the impacts of gentrification resulting in minorities being moved to the edges of Denver. Tr, audio, Denver, 7/14/21, 8:16:09; 9:27:59.

To be sure, voters in the proposed First Congressional District are not grouped solely on the basis of race, but instead Colorado Common Cause proposes a new First Congressional District that seeks to bring together Hispanic voters who also live in geographically connected areas that share the same transportation, environmental, and commercial interests, along with various socioeconomic

concerns. Thus, although race figures in the configuration of the proposed Hispanic majority district, it is not "in substantial disregard of customary and traditional districting practices." *Sanchez v. State of Colorado*, 97 F.3d at 1328 (citing *Miller v. Johnson*, 515 U.S. at 916 (O'Connor, J., concurring)).

b) Communities of Interest in Proposed Second Congressional District

Colorado Common Cause's proposed 2nd Congressional District respects the one person/one vote mandate, preserves communities of interest, protects political subdivisions, and is contiguous and compact. This district keeps together the northwest Denver suburbs of Arvada, Westminster and Northglenn, and connects them to the cities of Broomfield, Lafayette, and a large portion of Boulder County, including the city of Boulder, to follow the key US36 and E470 transportation corridors. Tr., Mtg Mats, 6/23/21, Preliminary Plan Materials, Attachment C, pp. 6-7; Tr., Pub.Cmt., G. Young, 9/20/21.

Additionally, the proposed Second District includes common mixed land-use in the region where large-scale housing developments are interspersed among historically agricultural or foothills open space areas. Tr. Pub. Cmt., P. Morrison, 9/20/21. This region is also united by its struggled to secure the resources necessary to build and sustain connected public transit and infrastructure projects, which would benefit from unified representation in Congress. Tr., Pub.Cmt., C.

Brazanskas, 9/21/21. Finally, the region has a strong science and technology community centered in Boulder and Broomfield and growing to the surrounding areas. Tr. Pub. Cmt., M. Miller, 9/9/21; Pub. Cmt., S. Key, 6/17/21.

c) Communities of Interest in Proposed Third Congressional District.

Proposed Congressional District Three combines the Western Slope and Mountain resort communities into a single district with many shared community interests including water management, wildfire management, land and forest management, protecting its parks and other environmental resources which drive tourism as a major economic source and agriculture. Tr., Pub. Cmt., Rio Blanco County Commissioners, 9/28/21; Pub. Cmt., B. Ross, 9/28/21; Pub. Cmt., C. Luppens, 9/16/21; Pub. Cmt., S. Sweeney, 9/15/21.

The district keeps the Western Slope whole, which was a common refrain of public testimony. Tr. Pub. Cmt., R. Deal, 10/1/21; Pub. Cmt., B. Horn, 9/27/21; Pub. Cmt., T. Katieb, 9/16/21; Pub. Cmt., R. Jacobson, 9/10/21. The district also contains all of Colorado's ski area resorts, bringing into the district the entirety of Summit, Eagle, and Grand Counties, connecting to Pitkin County via the important I-70 transportation corridor, and joining La Plata, Gunnison and Routt Counties as centers of recreation. Tr. Pub. Cmt., E. King, 9/25/21; Pub. Cmt., K. Bohrer, 9/21/21; Pub. Cmt., S. Warren, 8/31/21. The district keeps whole the Roaring Fork

Valley community. Tr. Pub. Cmt., A. Zane, 9/25/21; Pub. Cmt., J. Godes, 9/22/21. The district also joins regions of western Larimer, Boulder and Jefferson counties which share a mountain west landscape and economic and cultural interests with the remainder of this district as opposed to the cities on the front range. Tr. Pub. Cmt., O. D’Emilio, 9/10/21; Pub. Cmt., B. Groundwater, 8/2/21; Pub. Cmt., L. Dostrumani, 7/7/21; Pub. Cmt., G. Linson, 6/26/21.

d) Communities of Interest in Proposed Fourth Congressional District.

Proposed Congressional District Four is centered on Colorado’s eastern plains and combines north and central eastern Colorado with more rural parts of Weld, Adams and Arapahoe counties, along with most of southern Douglas and northern El Paso Counties. This creates a district with deep roots to Colorado’s agricultural, farming and ranching industry, agribusiness, along with drought and water management concerns. Tr. Pub. Cmt., M. Babel, 9/27/21; Pub. Cmt., D. Gutwein, 9/27/21; Pub. Cmt., P. Chapa, 9/27/21.

The proposed Fourth Congressional District also has a shared alternative energy community to support planned residential construction that links the eastern plains with Douglas County via Excel Energy’s transmission line running from the eastern plains to the Pawnee-Daniels Park Substation in Douglas County. Tr. Pub. Cmt., C. Stimpson, 9/28/21.

e) Communities of Interest in Proposed Fifth Congressional District.

The proposed Fifth Congressional District is a southern district that connects the San Luis Valley, Lower Arkansas Valley and Pueblo to the southern portion of El Paso County. The district tracks the southern I-25 corridor extending from Colorado Springs south through Pueblo and Trinidad to the New Mexico border. The district preserves the San Luis Valley and connects it to Pueblo, in support of the longstanding ties of history, ethnicity, and culture between these two communities. Tr. Pub. Cmt., R. Cascade, 9/24/21; Pub. Cmt., F. Wiant, 9/24/21; Pub. Cmt., D. Allerton, 9/24/21. The district also connects Fountain in El Paso County to Pueblo in recognition of the community of interest centered around Fountain obtaining its water from the Pueblo Reservoir. *See* <https://www.cpr.org/2021/06/09/fountain-colorado-springs-housing-low-water-supply/>.

This southern district creates the opportunity for these similarly-situated communities to have a voice to advocate for issues impacting the region, such as poverty and environmental justice, and not be subject to the whims of the western slope or the Denver metro area. Tr. Pub. Cmt., T. McKenna, 9/27/21; Pub. Cmt., B. Taylor, 9/27/21; Pub. Cmt., C. Tidd, 9/20/21.

Pueblo also serves as a regional resource for southern Colorado for health care, banking, and shopping. Tr., Pub. Cmt., K. Adams, 9/23/21. The district also

keeps the southeastern Colorado counties of Prowers, Bent and Baca and the lower Arkansas Valley with their agricultural neighbors of Pueblo and the San Luis Valley. Tr. Pub. Cmt., C. Cure, 9/24/21; Pub. Cmt., F. Wiant, 9/24/21. In addition to supporting these important communities of interest, the makeup of this southern district creates a minority influence district with a 25% Hispanic population, increasing the ability for the community to influence policy makers. Tr. Pub. Cmt., B. Waddell, 9/23/21.

f) Communities of Interest in the Sixth Congressional District

The proposed Sixth Congressional District preserves the municipal boundaries of south Denver and northern Aurora communities to the greatest extent possible, resulting in a district that takes in remaining portions of Denver and Aurora and parts of Centennial east of Parker Road. Consistent with the Colorado Constitution, it keeps the rest of the city and county of Denver whole after the creation of District One which ensures that Hispanics in the region did not have their electoral influence diluted.

The proposed Sixth Congressional District connects the cultural centers in Denver with those in Aurora, and the district is now home to The Aurora History Museum, Wings Over the Rockies Air & Space Museum, Mizel Museum, Four Mile Historic Park, History Colorado, The Denver Zoo, Denver Museum of Nature

and Science, Molly Brown House, Denver Firefighters Museum, Denver Art Museum, Museo de las Americas, and the Children's Museum. Keeping these cultural institutions together is core to their ability to advocate for federal funding. Tr. Pub. Cmt., G. Sparks, 7/27/21. Connecting the cultural and business centers of two of the state's most diverse cities recognizes the economic, business, transportation and tourism interests shared in the region. Finally, Denver's Central Business District is connected to Glendale, Cherry Creek and Aurora's municipal and economic centers recognizing the interconnection of this regions' consumer and business centers.

g) Communities of Interest in the Seventh Congressional District

Colorado Common Cause's proposed Seventh Congressional District collects south and west Denver suburbs in Jefferson, Douglas and Arapahoe Counties into a district that acknowledges their common economic, commercial, and aging neighborhood status. These communities of Littleton, Highlands Ranch, Centennial, Roxborough, Columbine, Lakewood and their surrounding neighborhoods have over time grown into one continuous suburban corridor. These communities have common interests arising from similar transportation, education, environmental and recreational concerns. Tr. Pub. Cmt., A. Liniger, 9/23/21; Pub. Cmt., M. Burch, 9/26/21.

There is a technology community of interest with the Lockheed Martin campus and the northern parts of Douglas County, including Roxborough, Highlands Ranch, and Lone Tree. Tr. Pub. Cmt., A. Liniger, 9/23/21. These areas of northern Douglas County belong with other metro-area suburbs due to their shared urban character as a bedroom community to the Denver metro area, and their reliance upon infrastructure to facilitate participation in commerce and access to jobs. Tr. Pub. Cmt., K. Doherty, 9/9/21. The newly drawn Seventh Congressional District moves Cherry Hills Village and Greenwood Village into the district in recognition of its semi-rural, non-industrial, transportation commonalities. Tr. Pub. Cmt., M. Schaeffer Conroy, 7/30/21.

h) Communities of Interest in the Eighth Congressional District

Colorado Common Cause's proposed new Eighth District recognizes northern Colorado as a distinct community of interest along the northern I-25 transportation corridor. Tr. Audio, Greeley, 8/14/21, 3:23:38; 3:28:18. Communities in this district, including Fort Collins, Loveland, Longmont and Greeley, are characterized by rapid population growth pushing out legacy economic interests (such as agriculture and oil and gas) in favor of a more service- and tech-based economy. Tr. Pub. Cmt., M. Spann, 6/13/21. The communities presently struggle to meet the infrastructure, housing, education and healthcare

requirements of their booming populations, causing strain on regional resources that would be better addressed with singular representation in Congress. *Id.*

Towns in this proposed district are growing together with overlapping municipal boundaries that span county lines.

This new district recognizes that Greeley is an urban area with more commonalities to Fort Collins and Loveland than to its former home in the eastern plains' 4th Congressional District. Tr. Audio, Greeley, 8/14/21, 2:12:08; 2:15:12.

This proposal splits Weld County, with the western agriculturally-focused portions of the county remaining in the like-minded eastern plains' district. Tr. Audio, Greeley, 8/14/21, 4:02:25.

CONCLUSION

Based on the foregoing, the Commission abused its discretion when it submitted a final Congressional redistricting plan without conducting a Voting Rights Act analysis of racially polarized voting, without ensuring that its map did not dilute the impact of a racial or language minority group's electoral influence, and without regard to preserving whole communities of interest. Colorado Common Cause's proposed map demonstrates that the Commission can draw a map that meets the requirements of the Colorado Constitution. Colorado Common Cause respectfully requests that this Court reject the Commission's Plan, return it to the Commission with instructions to engage in the proper inquiries, and come

back with a map that complies with all portions of article 44.3 of Section V of the Colorado Constitution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 8, 2021, a true and correct copy of COLORADO COMMON CAUSE'S CONGRESSIONAL REDISTRICTING PLAN BRIEF was filed with the Court via Colorado Courts E-Filing System, with e-service to the following:

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<p>SUPREME COURT, STATE OF COLORADO</p> <p>2 East 14th Avenue, 4th Floor</p> <p>Denver, Colorado 80203</p>	<p>DATE FILED: October 8, 2021 4:11 PM</p>
<p>Original Proceeding Pursuant to Colorado Constitution, Art. V, §44.5</p>	
<p>In re Colorado Independent Congressional Redistricting Commission</p>	<p>▲ COURT USE ONLY ▲</p>
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<p>EXHIBIT TO COLORADO COMMON CAUSE'S CONGRESSIONAL REDISTRICTING PLAN BRIEF</p>	

Common Cause's proposed Congressional Redistricting Plan is found here:
<https://davesredistricting.org/maps#viewmap::74f7e269-f256-41b5-86f1-29789d882193>

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